



BAIL SLIP

Gopu, Appellant/Sole Accused S/o. Natarajan, is released on bail vide court order dated 18.02.2015 made in MP(MD)No.1 of 2015 in CRL A(MD)No.44 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	24.01.2019
Date of Judgment	21.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLICrl.A(MD)No.44 of 2015

Gopu : Appellant/Sole Accused
Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
Kumbakonam,
Thanjavur District. : Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code, against the judgment of the District and Sessions Judge, Mahila Court, Thanjavur, passed in SC No.95 of 2012, dated 21.11.2014.

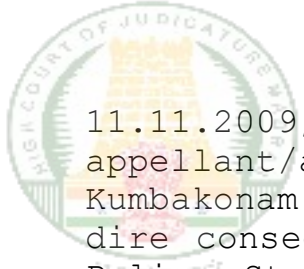
For Appellant : Mr.B.Jameel Arasu

For Respondent : Mr.A.P.G.Omh Chairma Prabhu
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Appeal is directed against the judgment of the District and Sessions Judge, Mahila Court, Thanjavur, passed in SC No.95 of 2012, dated 21.11.2014.

2.According to the prosecution, the appellant/accused was a Tea Master having tea shop near the house of victim/PW1 and PW1 used to take tea from the said shop and due to it, they started loving each other and consequence thereof, the appellant/accused used to visit the house of PW1 and had sexual intercourse in the absence of her parents on the false promise of marrying her and due to which the victim had begotten a female child and on



11.11.2009, when PW1 informed about her pregnancy to the appellant/accused nearby the Auto Stand at Kadai Veedhi, Kumbakonam Bus stand, the appellant/accused threatened her with dire consequences. The Inspector of Police, attached to All Women Police Station, Kumbakonam has filed a final report against the accused examining the witnesses.

3.The trial court, on proper appreciation of the evidence, both oral and documentary convicted the appellant/accused and sentenced him to undergo simple imprisonment for one month for the offence under section 294 of IPC and for the offence under section 417 IPC, sentenced him to undergo simple imprisonment for one year and for the offence under section 506(II) IPC, sentenced him to undergo four years simple imprisonment. Aggrieved by the judgment of the trial court, the appellant/accused is before this court.

4.Heard both sides and perused the materials available on record.

5.The contention raised on the side of the appellant/accused is that the appellant/accused was not connected with the alleged occurrence and further, there is no connection with PW1 and only on the basis of DNA test, the accused was convicted by the trial court, which is not correct and PW9 has no relevant education or experience in the DNA expertise and the blood sample has not been properly taken as per the procedure laid down for conducting the DNA test and there is no iota of evidence or conclusive proof to show that there was any threat to life or criminal intimation to the life of PW1 and there was no evidence for abusing PW1 in filthy language and hence, the conviction under section 294 IPC is highly illegal and in this case, PW1 deposed that the appellant/accused promised her to marry and subjected her to sexual intercourse and she became pregnant and gave birth a female child on 01.06.2010, but she again became pregnant and gave birth to a child on 24.10.2013 through the appellant/accused itself would prove the character of PW1 about her allegation that there was a promise of marriage by the appellant/accused and gave life threat to him did not arise and the appellant/accused did not give any promise or assurance that he would marry PW1 and thereby subjected her to sexual intercourse and there is no recovery of any material object from the accused at the time of the alleged occurrence and prays that the criminal appeal has to be allowed.

6.PW1 is the victim and she gave Ex.P1 complaint to the Police. PW1 in her complaint and evidence stated that she and the appellant/accused loved each other and her parents used to go their avocation and at that time, she only in her house and the love affairs were known to her mother and her mother condemned her



love affairs and when she was lonely in her house, the appellant/accused used to come to her house and promised to marry her and subjected her to sexual intercourse and due to it, she became pregnant and on 11.11.2009 at 8.00 pm near Ulavar Santhai, she saw the appellant/accused and requested him to marry her, but the appellant/accused used filthy language and threatened her and then she narrated the occurrence to her parents and on the next day morning, she went to the police station and gave Ex.P1 complaint. Hence, the evidence of PW1 is corroborated with the contents found in Ex.P1 complaint.

7.PW2 and PW3 are the parents of PW1. PW2 and PW3 deposed that they came to understand the lover affairs of PW1 and the appellant/accused and they advised their daughter not to have relation with the appellant/accused, but she continued the relation with the appellant/accused and their daughter told them that she was subjected to sexual intercourse on the belief that the appellant/accused would marry her and then their daughter became pregnant and when it was intimated by PW1 to the appellant/accused on 11.11.2009 near Ulavar Santhai, the appellant/accused used filthy language and threatened her and then, their daughter gave Ex.P1 complaint to the police.

8.The learned counsel appearing for the appellant/accused argued that at the time of alleged occurrence, PW1 is not a minor girl and hence, she know the consequences of physical relationship and only with her consent, she had sexual intercourse with the appellant/accused and the appellant/accused did not promise to marry her and subjected her to sexual intercourse and further, there was no occurrence took place as stated by PW1 on 11.11.2009 near Ulavar Santhai and prays that the appellant/accused is entitled to acquittal. For that, the learned counsel for the appellant/accused submitted a ruling reported in **(2013)4 MLJ (Cr1) 717 (Hamsaveni Vs. Inspector of Police, All Women Police Station, Tindivanam and others)**, wherein this court has held as follows:-

"There is no material on the side of the prosecution to prove that P.W.1 was below the age 18 years. Since she has aged above 18 years and the same has been admitted by her, she had sufficient intelligence to understand the significance and consequence of the act for which she was consenting to. At the time of examination of P.W.1 before the Court she was aged 22 years. Hence, on the date of occurrence she was more than 18 years. On this score, no offence is made out on the side of the accused. Evidence would indicate that she is well aware of the consequences which would arise if sexual

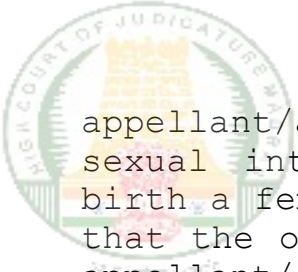


intercourse takes place before marriage. "

9. In this case, PW1 categorically stated that when she was lonely in her house, the appellant/accused used to come and promised to marry her and on the belief, she subjected her to intercourse. To prove that the appellant/accused came to the house of PW1, the neighbourhood of PW1 was examined as PW5. PW5 deposed that the appellant/accused frequently came to the house of PW1 and she and her husband questioned the accused and for that, the appellant/accused replied that he would marry PW1 and on 11.11.2007, they heard the sound from the house of PW1 and she and her husband went to the house of PW1 and heard that on 11.11.2009 when PW1 saw the accused near Ulavar Santhai and asked her to marry her since she was pregnant and for that, the appellant/accused used filthy language and threatened her and then on the next day, PW1 went to the police station and gave Ex.P1 complaint.

10. On careful perusal of the evidence of PW5, it reveals that the appellant/accused had the habit of going to the house of PW1, when she was lonely in her house. PW2 and PW3 also deposed that they heard from their neighbours that the appellant/accused frequently came to their house, when PW1 was lonely in the house and subsequently the parents of PW1 advised their daughter (PW1) not to conduct with the appellant/accused, but PW1 continued her relationship with the appellant/accused and due to it, she became pregnant and when it was questioned by PW1, the appellant/accused used filthy language and threatened her. Hence, from the evidence of PW2, PW3 and PW5, it reveals that the appellant/accused frequently came to the house of PW1, when she was lonely in her house. Further, PW1 deposed that the appellant/accused came to her house and promised to marry her and on the belief of the words of the appellant/accused, she subjected her to sexual intercourse and due to it, she gave birth a female child.

11. The Doctor, who examined PW1 was examined as PW12. PW12 deposed that she examined PW1 and found that PW1 was pregnant. In this case, PW1 deposed that due to sexual intercourse with the appellant/accused, she became pregnant and she gave birth a female child. To prove that the appellant/accused is the father of the child, the official, who conducted DNA test was examined as PW14. PW14 deposed that after chemical analysis, he found that the appellant/accused is the father of the child of PW1. Hence, from the evidence of PW12, it reveals that PW1 was subjected to sexual intercourse and from the evidence of PW14, it reveals that the appellant/accused is the father of child of PW1. There is no dispute that at the time of occurrence, PW1 is a major. Further, from the perusal of the evidence of PW1, it reveals that the



appellant/accused promised to marry her and subjected her to sexual intercourse and thereby made her pregnant and she gave birth a female child. Hence, this court is of the considered view that the offence under section 417 IPC is made out as against the appellant/accused.

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12.The learned counsel for the appellant/accused submitted that as far as the offence under section 294 and 506(II)IPC are concerned, no witness spoke about the occurrence which alleged to have happened near Ulavar Santhai near the Auto Stand and there are contradictions in respect of the place of occurrence and on the evidence of PW1 and hearsay witnesses of PW2 to PW6, conviction was given and hence the conviction is not sustainable in law and prays that the appellant/accused is entitled to acquittal.

13.PW1 deposed that on 11.11.2009 when she met the appellant/accused near Ulavar Santhai, she requested him to marry her, but the appellant/accused used filthy language and threatened her. It is an admitted fact that the above said market is a busy locality. But the Investigating Officer has not chosen to examine any person in the above locality. The Hon'ble Apex court repeatedly held in several cases that when a place of occurrence is a busy locality and the Investigation Officer failed to examine the independent person in that place, it is fatal to the prosecution. But in this case, no independent person in the place of occurrence was examined on the side of the prosecution. No separate rough sketch with regard to the alleged occurrence on 11.11.2009 was prepared and produced on the side of the prosecution.

14.At this juncture, it is necessary to refer the cross examination of PW15, which would run thus:-

“புகார்தாரரை மிரட்டியதாக நடந்த சம்பவம் உழவர் சந்தைக்கு அருகில் நடந்தது நான் தயாரித்த வரைபடத்தில் வாதியின் வீட்டையும் அதை சுற்றியுள்ள வீடுகளும் காண்பிக்கப்பட்டுள்ளது ஏதிரா வாதியை மிரட்டியதாகக் கூறும் இடம் பொறுத்து வரைபடம் தாக்கல் செய்யவில்லை என்றால் சரிதான்.”

Hence, it creates doubt, whether the appellant/accused used filthy language and threatened her. As per the version of PW1, the alleged occurrence took place on 11.11.2009 is at Ulavar Santhai near the Auto Stand. But in the observation Magazar and rough sketch, the place of occurrence is shown as the house of PW1. PW15 admitted that there was no separate rough sketch prepared for the above occurrence took place on 11.11.2009. There are lot of contradictions in the evidence of PW1 and PW15 in respect of the



alleged occurrence took place 11.11.2009.

15. In this case, the learned counsel appearing for the appellant/accused argued that after the alleged occurrence, PW1 continued the relationship with the appellant/accused and hence, the appellant/accused is entitled to acquittal. It is to be decided whether the accused on the date of the alleged occurrence committed the offence or not, and hence, it is held that the subsequent events between the appellant/accused and PW1 need not be looked into, in this case. Hence, it is held that the alleged occurrence took place on 11.11.2009 is not proved on the side of the prosecution. Hence, it is held that the appellant/accused is not found guilty under sections 294 and 506(II) IPC and accordingly, the findings of the trial court in respect of the offences under sections 294(b) and 506(II) IPC are set aside.

16. For all the reasons stated above, this court is of the considered view that the findings of the trial court in respect of the offence under section 417 IPC is confirmed. In so far as the findings of the trial court in respect of the offences under sections 294 and 506(II) IPC, they are set aside. However, considering the fact that the appellant/accused is the sole breadwinner of the family, the punishment imposed on the appellant/accused for the offence under section 417 IPC requires modification.

17. In the result, the criminal appeal is **partly allowed**. The punishment imposed on the appellant/accused for the offence under Section 417 IPC by the trial court is reduced to **2 months RI**. The period of sentence, if any already undergone by the appellant/accused shall be given set off under Section 428 of Cr.P.C. The appellant/accused is directed to pay a compensation of Rs.1,00,000/- (Rupees One lakh) each to the PW1 and her child namely Gopika, within a period of four weeks from the date of receipt of a copy of this order, failing which, the punishment imposed by the trial court shall stand restored.

For reporting compliance, post the matter after four weeks.

Sd/-

Assistant Registrar(AD-II)

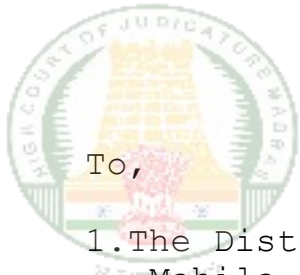
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Sub Assistant Registrar(CS)

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To,

1.The District and Sessions Judge,
Mahila Court,
Thanjavur.

2.The Inspector of Police,
All Women Police Station,
Kumbakonam,
Thanjavur District.

3.The Superintendent, Central Prison,
Trichy.

4.The Judicial Magistrate, Kumbakonam.

5.The Chief Judicial Magistrate,
Thanjavur district at Kumbakonam.

6.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.A(MD)No.44 of 2015
21.02.2020

DB(CO)
TR(08.06.2020) 7P 9C